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# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

19 Cr. 921 (AKH)

NICHOLAS TRUGLIA,

V.O.S.R.

Defendant.

-----x

New York, N.Y.  
August 2, 2023  
11:30 a.m.

Before:

HON. ALVIN K. HELLERSTEIN,

U.S. District Judge

## APPEARANCES

DAMIAN WILLIAMS

United States Attorney for the  
Southern District of New York

TIMOTHY CAPOZZI

Assistant United States Attorney

MARK GOMBINER

Attorney for Defendant

Also Present:

Michael Melaika, Probation Officer

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(Case called; appearances noted)

THE COURT: So we broke last time because Mr. Gombiner wanted to discuss the case with Mr. Capozzi off the record and see if there could be some common ground that would be established. So I'll let Mr. Gombiner report.

MR. GOMBINER: I'm sorry, Judge.

THE COURT: Just take off your mask, Mr. Gombiner.

Thank you. Please.

MR. GOMBINER: Well, we haven't completely reached a resolution in this matter, but what the parties would propose is that the government have until September 8 to determine whether or not they wanted to seek a resentencing, at which -- to obtain that, they would have to establish that Mr. Truglia has already fully failed to pay restitution. That's under statute 18, United States Code, section 3614(b). Or whether they would just want to proceed with the violation of supervised release.

They can't do both. They have to make a choice there. So we are attempting --

THE COURT: Why can't we do --

MR. GOMBINER: Because if he was going to be -- he can't be violated --

THE COURT: I'd ask, Mr. Gombiner, does he want to make the restitution?

MR. GOMBINER: He wants to, yes. And he would far

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1 prefer to --

2 THE COURT: What does he need to do?

3 MR. GOMBINER: He needs to be able to access digital  
4 -- it's a cryptocurrency --

5 THE COURT: I understand what it is. He needs his  
6 access code.

7 MR. GOMBINER: He needs his access code.

8 THE COURT: They're located somewhere else. He's told  
9 us New York. He's told us that he would need to travel to New  
10 York to get them. He was given permission to do so. He didn't  
11 go for his code, and from there he went to Miami, and  
12 apparently got into more trouble there with the courts in Miami  
13 or close to Miami. We've gained nothing.

14 I do not want to adjourn this. I think the government  
15 has to -- well, I think Mr. Gombiner logically is correct,  
16 Mr. Capozzi. If we're going to stand on the judgment, I can't  
17 enforce the V.O.S.R. We're going to get a different judgment.  
18 It means we abandoned the ability to enforce the existing  
19 judgment.

20 I think the primary interest at this time is to obtain  
21 restitution, and we don't need any new judgment to do that. We  
22 have all the tools we need right now. So it seems to me that  
23 we should proceed unless Mr. Gombiner comes up with an excuse  
24 that suggests that we have to wait some more.

25 I don't understand how Mr. Truglia can ask for

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1 permission to go New York to access his keys, and go to New  
2 York, and then not deliver on his promise.

3 MR. GOMBINER: Well, I can proffer an explanation,  
4 Judge. So my understanding is there are two places where -- or  
5 actually maybe three places where these keys -- the keys to  
6 this are located. One is on an account maintained by Proton,  
7 which I think is a company based in Switzerland.

8 Now, I talked to Pierce O'Donnell, who is the attorney  
9 for Mr. Turpin, and he told me he had had very extensive  
10 discussions with the legal department at Proton, and Proton  
11 told him that the account has been permanently locked, because  
12 of there was some suspicion that it was related to criminal  
13 activity.

14 Now, so one suggestion I had was that either the  
15 Court -- we could either -- I'm not sure Proton -- I don't  
16 really -- am not sure about subpoenaing a foreign company. I  
17 haven't really done that that much. But it would seem to me  
18 either the government or the Court could possibly require  
19 Proton to unlock the account for purposes of, you know,  
20 obtaining this code.

21 Alternatively, Mr. Truglia did go to New York. My  
22 understanding is this is a 24 letter code that's in like three  
23 separate --

24 THE COURT: Places?

25 MR. GOMBINER: -- strings of letters, and that he did

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1 -- he went with Mr. O'Donnell, and he did give him two of those  
2 three sets of letters. The third apparently is in the  
3 possession of another person who has declined to allow  
4 Mr. Truglia to obtain it.

5 Now, you know, I can't independently confirm any of  
6 this obviously, so I'm not going to like -- but that's -- so  
7 the second alternative would be to compel this person to at  
8 least, you know, come to court and say what he has or doesn't  
9 have. So that's I think what we would like to try to do if the  
10 Court, you know, wants to -- we don't have to obviously wait  
11 until September 8th to do any of those things.

12 THE COURT: Well, what's in New York?

13 MR. GOMBINER: So my understanding, what's in New  
14 York, is that there is an individual here who has both -- who  
15 has both a hard drive on which this code -- this key resides,  
16 and also he also has -- he just has a hard drive. He has a  
17 hard drive on which this code is in its entirety -- the  
18 remaining piece is on a hard drive. It's not on a piece of  
19 paper. It's on a hard drive that he has.

20 He also apparently has some jewelry that belongs to  
21 Mr. Truglia. Now, you know, I haven't -- I didn't really --

22 THE COURT: So if he went to New York --

23 MR. GOMBINER: Right.

24 THE COURT: -- where the hard drive is located --

25 MR. GOMBINER: Right.

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1 THE COURT: -- what happened?

2 MR. GOMBINER: So Mr. Truglia both spoke to this  
3 person -- I mean, I can give the Court his name if the Court  
4 wants, but spoke to this person over the phone, and went to his  
5 place of employment, and he declined to provide it.

6 So, you know, one possibility, we could have a  
7 hearing, and subpoena this individual, and see what he has to  
8 say about that. I mean, maybe a subpoena would get his --  
9 maybe that would change his mind about what he wanted to do.  
10 But that's my understanding of what the current situation is.

11 THE COURT: Comments, Mr. Capozzi?

12 MR. CAPOZZI: Your Honor, Mr. Truglia has made a  
13 series of excuses for why he has been unable to pay restitution  
14 after promising to do so to this Court in a signed restitution  
15 order. The cryptocurrency access is one thing. Separate and  
16 apart from that, he, in the PSR, declared assets of well over a  
17 million dollars in other forms. He has made zero payments of  
18 restitution, despite having assets separate and apart from this  
19 purported wallet. He has sold a luxury watch for \$92,000 in  
20 February. He has a bank account --

21 THE COURT: What did he do with that money?

22 MR. CAPOZZI: Your Honor, I do not believe I know the  
23 tracing on where those funds ultimately went.

24 THE COURT: Mr. Gombiner, what did he do with the  
25 money?

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1 MR. GOMBINER: Well, Judge, may I consult with my  
2 client and see if it --

3 THE COURT: Yes.

4 MR. GOMBINER: Judge, could I just go in the back for  
5 a second, so we don't have to whisper?

6 THE COURT: Marshals, take him in the back room.

7 MR. GOMBINER: Thank you. Thank you, Judge.

8 I'm not a very good whisperer, and I don't want to --

9 THE COURT: Well, it's very hard. The situation is  
10 very hard.

11 MR. GOMBINER: Thank you, Judge.

12 (Pause in proceedings)

13 THE COURT: Yes, Mr. Gombiner.

14 MR. GOMBINER: All right. Your Honor, my  
15 understanding is that Mr. Truglia spent the proceeds of the  
16 sale of the watch. That largely went to legal fees for his  
17 lawyer in California, and it went to repay some student loans.  
18 So the money is not currently available.

19 My further understanding is that Mr. Truglia I think  
20 was remanded prior to his sentencing, because of some  
21 violations of his conditions of pretrial release, and the  
22 morning that he was being remanded, he gave to this person --  
23 he gave this person -- I think his name is Bennett Genovese --

24 THE COURT: Is what?

25 MR. GOMBINER: I think his name is Bennett Genovese,

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1 G-e-n-o-v-e-s-e. He gave him several hundred thousand dollars  
2 worth of jewelry, and he gave him a hard drive that has on it  
3 the third piece to this key to the digital wallet. And that --  
4 Mr. Genovese was supposed to send the hard drive to  
5 Mr. Truglia's father. He didn't do that. And now he has  
6 declined to turn over either the jewelry or the hard drive.

7 THE COURT: These are all --

8 MR. GOMBINER: You know, I'm not saying --

9 THE COURT: I know you're the messenger here.

10 MR. GOMBINER: I'm --

11 THE COURT: You're just telling us what Mr. Truglia  
12 told you.

13 MR. GOMBINER: Well --

14 THE COURT: Mr. Capozzi, how do you want to proceed?  
15 Do you know?

16 MR. CAPOZZI: Well --

17 MR. GOMBINER: Well, Judge, my suggestion is I would  
18 ask for a hearing, and then we can subpoena --

19 THE COURT: That's what I think we should do, have a  
20 hearing.

21 MR. GOMBINER: And at a hearing, we will subpoena  
22 Mr. Genovese as a witness.

23 THE COURT: What do you want to do?

24 MR. CAPOZZI: Setting a hearing is fine, your Honor.

25 THE COURT: Having a hearing.



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1 MR. CAPOZZI: Having a hearing. And I would, I mean

2 --

3 THE COURT: What's going to happen at the hearing?

4 Who are going to be the witnesses?

5 MR. CAPOZZI: Well, your Honor, I think the government  
6 could produce to testify perhaps the probation officer, who  
7 made the repeated efforts to communicate the need for payment  
8 of restitution. The government could introduce documentary  
9 records relating to, for example, the watch sale. There was  
10 also a Wells Fargo account that the defendant had, which he did  
11 not disclose on a financial disclosure form, which received  
12 over \$130,000 over -- in the February -- January, February of  
13 this year, none of which --

14 THE COURT: That would be enough, Mr. Gombiner, to  
15 allow me to find by a preponderance that your client is guilty.  
16 Then I can sentence him on the V.O.S.R., according to  
17 probation, to about 19 months under the guidelines if I do it  
18 consecutively, and up to six years if I do it according to  
19 statutory powers.

20 Now, Mr. Truglia, the question really for you, because  
21 you're subject to sitting in jail another six years -- I don't  
22 know, maybe you like it there, but I can't see any reason that  
23 you can't get the keys. If you can't do it, you can get your  
24 father to do it. If you can't do it, you can empower the  
25 government to do it by giving them the information, and giving

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1       them the names that are involved.

2               MR. GOMBINER:   Well --

3               THE COURT:   You were about to tell me, Mr. Gombiner,  
4       the name of one person who denied Mr. Truglia the hard drive on  
5       which the keys are.

6               MR. GOMBINER:   Yes.   His --

7               THE COURT:   Presumably Mr. Truglia can access that  
8       hard drive.   He can access the hard drive in New York.   Why  
9       can't he access it where he sits?

10              MR. GOMBINER:   Because he doesn't have it.   That's the  
11      problem.

12              THE COURT:   He doesn't have the key?

13              MR. GOMBINER:   He doesn't have the hard drive itself.  
14      That's in Mr. --

15              THE COURT:   Well, you don't have that possession of a  
16      hard drive.   We just have to have the possession of a command  
17      to unlock the hard drive.

18              MR. GOMBINER:   No.   I think he would actually need  
19      physical access to the hard drive.

20              THE COURT:   Why?

21              MR. GOMBINER:   Because it's not connected to the  
22      internet or anything.   It's just an object sitting there with  
23      information on it.   I mean, he would -- Mr. --

24              THE COURT:   You know, I think Mr. Truglia has a  
25      choice.   Having a really decent explanation why he can't get

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1 the money, because he has the money apparently, or sitting in  
2 jail. So that's your choice, Mr. Truglia.

3 MR. GOMBINER: Well, so, Judge, what I would suggest  
4 is why don't we schedule a date for a hearing, maybe like in --  
5 I have a trial that's supposed to start September 11, but the  
6 second or third -- like the third week in September, and in the  
7 interim, I can definitely discuss with the government whether  
8 they want to assist us in trying to retrieve this hard drive.  
9 And, you know, I understand this is at our peril to a certain  
10 extent. I mean, this is all not credible -- I don't think  
11 that's going to be help --

12 THE COURT: There's another question: To what extent  
13 does the government have to spend its resources on collecting  
14 the restitution. Mr. Turpin has the ability to do this as  
15 well, and his added expense could be added on to the debt.

16 MR. GOMBINER: Well, I think --

17 THE COURT: Mr. Capozzi.

18 MR. CAPOZZI: Your Honor, I believe the victim and his  
19 counsel have expended significant resources since the date of  
20 sentencing trying to get Mr. Truglia to deliver on his  
21 restitution obligation, and counsel for Mr. Turpin has said  
22 that he's happy to participate in a hearing before your Honor  
23 to explain those efforts. And so I think --

24 THE COURT: I'll tell you something else. What you  
25 need is to find out the names from Mr. Truglia of people who

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1 have access to the numbers, to the key, and take the deposition  
2 so those people are under oath --

3 MR. GOMBINER: I mean, that's fine, Judge. I would  
4 love that to happen.

5 THE COURT: Bring them to a hearing. Are all those  
6 people in the U.S.?

7 MR. CAPOZZI: Yes, they are, Judge.

8 MR. GOMBINER: He lives in Brooklyn.

9 THE COURT: Do you have the names to give to  
10 Mr. Capozzi?

11 MR. GOMBINER: Yes. I think I have a phone number,  
12 too. I don't know. I don't have it with me, but I do have  
13 one.

14 MR. CAPOZZI: Your Honor, if the Court set a hearing  
15 date, I would think that -- this seems to meet the defense's  
16 case, and the defense would have an opportunity to subpoena  
17 witnesses. Again, this is not to say we wouldn't also consider  
18 doing it, but if there were a hearing on the V.O.S.R., I would  
19 think they would be capable of subpoenaing witnesses who they  
20 believe would testify favorably to them in terms of an  
21 explanation for why he hasn't been able to pay.

22 THE COURT: I recognize what you're saying, but I  
23 think in the interest of getting the money, you should do it.

24 MR. CAPOZZI: I take your point, your Honor.

25 THE COURT: You're absolutely right in terms of a

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1 technical defense, but our interest is less technical defense  
2 than getting the money and getting the victim repaid. It's an  
3 outright theft of money from the victim, and he is entitled to  
4 restitution. If we could have a hearing, you get the people  
5 here --

6 MR. CAPOZZI: And I agree if we have a hearing date,  
7 then the government could subpoena them as well.

8 THE COURT: September 18.

9 MR. GOMBINER: Thank you, Judge.

10 THE COURT: 10:00.

11 MR. CAPOZZI: Your Honor, just two points before we  
12 adjourn, if your Honor is inclined to adjourn. One, as a  
13 formal matter, the violation report was amended following our  
14 last appearance, and so --

15 THE COURT: There are -- I'll arraign him on those.

16 MR. CAPOZZI: You'll arraign him on specification  
17 five.

18 THE COURT: Yes. I don't know if I did five, so start  
19 with five. I know we did one through four.

20 MR. CAPOZZI: And I believe the others are still  
21 there. It's just five is the only one that is changed, so I  
22 believe you would only need to arraign him on the amended no.  
23 5.

24 THE COURT: I can do it all over again. There's no  
25 harm in it. I'll do 5 through 7. And the second is they give

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1 you notice that a judgment was -- suffered a clerical error.  
2 We neglected to put down the second tranche of the restitution  
3 ordered by the order of restitution and ordered in the  
4 sentencing transcript. So we will amend the judgment as well.

5 MR. CAPOZZI: And just the second point, just as a --  
6 and I haven't run it to ground. My understanding of the  
7 sentencing possibility on the violation would be that  
8 consecutive sentences would not necessarily be available and,  
9 thus, the statutory maximum ordinarily, regardless of the  
10 number of specifications, would be two years on this given his  
11 underlying conviction.

12 THE COURT: Why is that?

13 I can see where a number of these specifications,  
14 they're redundant, but specification five is different from  
15 anything else. So I can -- I believe -- and 6 and 7 are  
16 different from anything else.

17 MR. CAPOZZI: And I will check this.

18 THE COURT: No. 3 will depend on the outcome of the  
19 proceedings in the Florida Criminal Court. These are all  
20 different. I don't know why I can't sentence cumulative.

21 MR. CAPOZZI: And between now and when we have the  
22 hearing, I will do further research to solidify my  
23 understanding.

24 THE COURT: I would appreciate it very much, because  
25 these are different specifications. They don't overlap, in

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1 many respects, most respects. No. 1 is a felon in possession  
2 of ammunition. No. 2 is a state crime, which we would defer  
3 for the resolution of the state crime. No. 3 is also a state  
4 crime. No. 4 is a travel violation, which he's admitted to.  
5 No. 5 is a failure to pay restitution. Nos. 6 and 7 have to do  
6 with the failure to seek employment.

7 MR. CAPOZZI: And, your Honor, just to be clear on the  
8 scope of September 18, my proposal for the Court's  
9 consideration would be to focus on what I think has been the  
10 focus of everyone in the courtroom, which is the restitution  
11 obligation, making the victim whole, as opposed to at this time  
12 attempting to prove up, which I believe the government could,  
13 but prove up the state crime specifications, for example.

14 THE COURT: I don't think you can do the state crime  
15 until the state decides itself, so those can remain. We can  
16 defer those, and deal with the rest.

17 MR. CAPOZZI: Okay, your Honor.

18 MR. GOMBINER: Thank you, Judge.

19 THE COURT: All right. Mr. Truglia, please stand.  
20 Take off your mask.

21 I believe I arraigned you on specification five, but  
22 we'll do it again. On or about February 6, 2023, it reads you  
23 failed to make a good faith effort to pay the Court ordered  
24 restitution, and that you failed to make a payment in the  
25 amount of \$12,100,000 within 30 days, that is, by December 31,

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2022, and you failed to make a payment of \$8,279,007 by January 31, 2023, which amounts would have totaled the amount of restitution, \$20,379,007.

How do you plead?

THE DEFENDANT: Not guilty, your Honor.

THE COURT: Specification six, March 24, 2023, you failed to truthfully answer an inquiry from the probation officer, to-wit, you reported actively seeking employment when your search for employment did not begin until March 29, 2023. That was following -- I'll stop there.

How do you plead?

THE DEFENDANT: Not guilty.

THE COURT: Seven, on or about March 13 and March 20, 2023, you failed to follow the instructions of the probation officer in that on March 6, 2023, you were instructed to provide weekly job search logs, and you failed to do so.

How do you plead?

THE DEFENDANT: Not guilty.

THE COURT: A not guilty plea will be entered in response to specifications 5, 6, and 7.

To review, Mr. Truglia pleaded not guilty to specifications 1, 2, and 3, and guilty to specification 4; is that right, Mr. Gombiner?

MR. GOMBINER: Yes, Judge.

THE COURT: All right. We will adjourn this matter



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1 until September 18 at 10:00, when an evidentiary hearing will  
2 be held.

3 MR. CAPOZZI: Your Honor, one last point I want to --

4 THE COURT: If we're not finished on the 18th, we'll  
5 continue on the 19th.

6 MR. CAPOZZI: Your Honor, one other point, just to  
7 flag in terms of if we get to a point where we're having  
8 sentencing on the violation. The Bureau of Prisons calculated  
9 that the defendant had over served time. That is, he, on his  
10 original sentence, spent more time in custody than was  
11 authorized, because he got credit for time spent in California  
12 state custody.

13 I raise this simply to say --

14 THE COURT: Who gave him credit for California state  
15 custody?

16 MR. CAPOZZI: The Bureau of Prisons gave him credit  
17 for time spent in California state custody per their  
18 understanding of the statutory obligations. And my reading of  
19 the statute is the Bureau of Prisons was correct in that based  
20 on the peculiar procedural background here, where he was  
21 serving time in California, and that case related to a crime  
22 that he committed after the federal crime, and it hasn't yet  
23 been resolved. Long story short, when -- if and when the Court  
24 sentences the defendant again, he will have a stored bank of  
25 credit that exists, which is roughly equal to a year. And

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1 so --

2 THE COURT: You'll remind me of it.

3 MR. CAPOZZI: I will, Your Honor, but I just wanted to  
4 flag it now, so there's no misperception that there is, in  
5 fact, you know --

6 THE COURT: I will sentence him to what's appropriate,  
7 and if he has a credit, he gets a credit against it. It's not  
8 a very difficult issue.

9 MR. CAPOZZI: Thank you, Judge.

10 THE COURT: September 18, 10:00, for a hearing on the  
11 matter. If the matter is resolved before then, you'll let me  
12 know, and we'll probably dismiss the specifications.

13 MR. CAPOZZI: Thank you, Judge.

14 (Adjourned)